

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 622 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

RAMESHBHAI C SHAH

Appearance:

Mr. D.N. Patel, In-charge Public Prosecutor
for the appellant State.
MR HM PARIKH for Respondent No. 1

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 28/06/1999

ORAL JUDGEMENT

The respondent came to be acquitted of the offences punishable under Section 66(1)(b), 65F, 67A, 81 and Section 116 of the Bombay Prohibition Act, by the then learned Judicial Magistrate (F.C.) at Nadiad, delivering the judgment in Criminal Case No. 1511 of 1991 on his file on 29th April 1992. The prosecution, aggrieved by such judgment of acquittal, has filed this appeal challenging the legality and validity of the order of acquittal.

2. In short, it is the case of prosecution that Shri B.J. Shah, the then Police Sub-Inspector, Kheda at Nadiad, received the information that the respondent and Bhogha Ghadiyali were dealing in foreign liquor without any licence or permit. He also received the information that in one field within the Sim of village Dabhan both had brought large numbers of foreign liquor bottles and boxes and were about to remove the same to another place. On receipt of such information, the Police Sub-Inspector with his members of staff and two panchas left the police station. After the raiding party headed by Police Sub-Inspector reached the farm house the members thereof were deployed at different places. It was a night time. With the aid of torch light, the police officer could realize that Bhogha Ghadiyali was there in the farm and some person inclusive of the respondent were loading the maruti car with the boxes containing the liquor. The car was parked near the farm-house in the farm. Immediately, the members of the raiding party entered the farm house. Bhogha Ghadiyali ran away but the respondent could be apprehended. He gave the details about his name and address. The Maruti car and the house were searched. On taking the search, in all 206 boxes and 793 loose bottles of foreign liquor were found. The same inclusive of the Maruti car were seized in the presence of the panchas. The respondent made it clear that he was having no pass or permit to import and keep the bottles of foreign liquor in his possession. Undergoing necessary formalities, a panchnama was drawn and after sealing the muddamal seized the raiding party went back to the police station. The Police Sub-Inspector then lodged the FIR. After completing the investigation a chargesheet against the respondent for the aforesaid offences was then filed in the Court of the Judicial Magistrate (F.C.) at Nadiad. A plea was recorded. The respondent pleaded not guilty. The prosecution then led necessary evidence to prove the charge. Appreciating the evidence, the learned Magistrate reached the conclusion that the prosecution had failed to prove the charge beyond reasonable doubt. He, therefore, acquitted the respondent. It is against that order of acquittal, the present appeal is filed.

3. Mr. D.N. Patel, learned In-charge Public Prosecutor contends that the learned Magistrate fell into error in not accepting the evidence of the Police Officer. Even if the panchas have turned hostile and other witnesses do not support the case of the prosecution, it is open to the Court to place reliance on the sole evidence of the police officer who raided the place and seized the muddamal because, in law, quality of

the evidence is material and not the numbers of the witnesses. In law, the Court can convict the accused only on the evidence of a single witness.

4. I have carefully gone through the evidence on record, and read the Judgment of the learned Magistrate. I see no justifiable reason to interfere with the findings and conclusions drawn by the learned Judicial Magistrate. He has, in my view, made no mistake either of law or of fact in acquitting the respondent.

5. It may be stated that the panchas have turned hostile and other witnesses have showed ignorance. The evidence of those witnesses, therefore, in no way, helps the prosecution. The whole case rests upon the evidence of the police officer recorded at Ex. 14. If the evidence of the sole witness is found appealing leaving no room to doubt, the court is free to place reliance thereon and if it finds that the said evidence of a single witness establishes the charge beyond reasonable doubt, it is open to the Court to convict the accused, for, not the quantity, but the quality is material. In this case, therefore, it is required to be examined whether the evidence of the police officer is appealing leaving no room to doubt and whether the same is reliable on the basis of which the respondent can be convicted.

6. The evidence of the police officer also cannot be accepted for basing the conviction on one material ground. It is the duty of the prosecution to prove the charge beyond reasonable doubt. The prosecution has, therefore, to show that the muddamal in question was found from the possession of the accused. The identity of the goods seized from the possession of the accused has, therefore, to be established, without any doubt. In this case, identity of the muddamal bottles & boxes having been seized from the possession of the respondent is not established by the evidence of the police officer. While seizing the bottles and boxes, the slips containing the signatures of the panchas are not affixed on the bottles and boxes. When a query was made, the learned In-charge Public Prosecutor, failed to point out any thing from the record going to show that the slips containing the signatures of the panchas were affixed on the bottles and boxes seized. The Panchnama is also silent on the point and the evidence of the police officer too. When that is so, it is difficult to hold that the muddamal before the Court was the same muddamal seized from the farm house, and from the possession of respondent. When identity of the muddamal is not established, the respondent cannot be connected with the

alleged offence. No other point is required to be dealt with as on the point discussed, the whole case falls head-long.

7. For this reason alone going to the root, I cannot agree with the submission of the learned In-charge Public Prosecutor that only on the basis of the evidence of the police officer, the learned Magistrate ought to have convicted the respondent. The appeal, in the result, is liable to be dismissed and is accordingly dismissed, maintaining the order of the acquittal passed by the learned Judicial Magistrate (F.C.) at Nadiad.

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(rmr).